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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,458	09/23/2003	Chantal Jubinville	20339.13	2368

49358 7590 02/22/2006  
CARLTON FIELDS, PA  
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ATLANTA, GA 30309

EXAMINER
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HOEL, MATTHEW D

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/668,458

Applicant(s)

JUBINVILLE ET AL.

Examiner

Matthew D. Hoel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 to 7, drawn to awarding a portion of a jackpot amount, classified in class 463, subclass 26.
  - II. Claims 8 to 12, drawn to awarding a portion of a jackpot amount, classified in class 463, subclass 26.
  - III. Claims 13 to 15, drawn to awarding a portion of a jackpot amount, classified in class 463, subclass 26.
  - IV. Claims 16 to 18, drawn to awarding a portion of a jackpot amount, classified in class 463, subclass 26.
2. The inventions are distinct, each from the other because of the following reasons:
3. Inventions I, II, III, and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. Invention I is drawn to a method of awarding a portion of a jackpot amount involving "determining that *none of the entries for the occurrence of the lottery game match every number in the first subset of numbers for the entry to a corresponding one of the numbers in the second subset of numbers for the outcome of the lottery game*; and awarding a share of at least a portion of the jackpot amount to at least a portion of the entries for the occurrence of the lottery game wherein *none of the numbers of the first subset of numbers of the entry match any of*

*the numbers in the second subset of numbers for the outcome of the lottery game"* (emphasis added). Invention II is drawn to a method of awarding a portion of a jackpot amount involving "determining that *none of the entries for the occurrence of the lottery game match every number in the first subset of numbers for the entry to a corresponding one of the numbers in the second subset of numbers* for the outcome of the lottery game; *randomly selecting a number from the range of zero to one less than the maximum number of numbers in the first subset of numbers*; and awarding a share of the at least a portion of the jackpot amount to each entry having the same number of the numbers from the corresponding first set of numbers matching numbers from the second subset of numbers for the occurrence of the lottery game as the *randomly selected number from the range of zero to one less than the maximum number of numbers in the first subset of numbers*" (emphasis added). Invention III is drawn to a method of awarding a portion of a jackpot amount involving "*randomly selecting a percentage from the range of zero percent to one hundred percent*; awarding a share of the base jackpot amount to each entry matching every number in the first subset of numbers for the entry to a corresponding one of the numbers in the second subset of numbers for the outcome of the lottery game; determining a bonus jackpot amount by *multiplying the bonus jackpot amount by the randomly selected percentage*; and awarding a share of the *bonus jackpot amount to each entry matching every number in the first subset of numbers for the entry to a corresponding one of the numbers in the second subset of numbers* for the outcome of the lottery game" (emphasis added). Invention IV is drawn to a method of awarding a portion of a jackpot amount involving

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*"randomly selecting a first percentage from the range of zero percent to one hundred percent; awarding a share of a first one of the partial jackpot amounts to each winning entry of the award of at least a portion of the jackpot amount; determining a first bonus jackpot amount by multiplying a second one of the partial jackpot amounts by the randomly selected first percentage; and awarding a share of the first bonus jackpot amount to each entry winning entry of the award of at least a portion of the jackpot amount"* (emphasis added). See MPEP § 806.05(d).

4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II, III, and IV, etc., restriction for examination purposes as indicated is proper. Each of these groups of claims is clearly a separate method of calculating a portion of a jackpot amount to be awarded. Each invention is clearly usable by itself, not needing to be used with any of the other inventions in order to be practiced. Since each invention is a different method of calculation, each invention would require a separate search and evaluation on its merits for novelty and non-obviousness.

5. A telephone call was made to the applicants' representative, Lance Reich, on Jan. 27<sup>th</sup>, 2006 to request an oral election to the above restriction requirement, but did not result in an election being made. Mr. Reich indicated that he would like to see a written requirement.

6. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

7. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

8. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

### ***Conclusion***


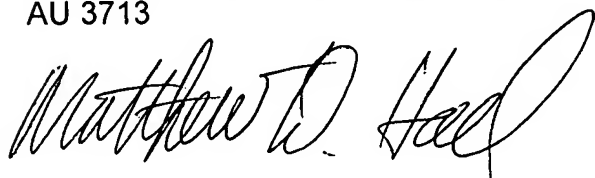
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matthew D. Hoel, Patent Examiner  
AU 3713



XUAN M. THAI  
SUPERVISORY PATENT EXAMINER  
TC 3700